

REMARKS

Claims 1-24 and 26-27 stand rejected. Claim 26 is amended. Claims 1-24 and 27 are canceled. Claims 28-41 are added. Claims 26 and 28-41 are pending.

Support for the amendment and the new claims is found in the application as originally filed, including the figures. No new matter is added.

The claim amendments are made without prejudice to the Applicant filing one or more continuation or divisional applications with one or more of the original claims.

In the office action of June 23, 2008, the Examiner states that in rejecting Claim 26, the Examiner's position is that "providing an operative space within a patient" is a functional limitation, and that Akiyama is capable of performing this function.

While the Applicant disagrees with this characterization, in order to further prosecution on the merits, Claims 26 is amended to recite, among other things,

a vacuum device sized and shaped to be positioned against a portion of a patient's body

It is respectfully urged that the art of record does not teach or suggest the subject matter of Claim 26, or the claims depending from Claim 26.

The amendments made in this response do not indicate agreement with the Examiner's rejection, and the Applicant reserves the right to file one or more continuation application with claims previously presented.

Respectfully submitted,

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